Supreme Court, U.S.
FILED
JUN 26 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-1849

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

GLEN WALKER ET AL.,

PETITIONER,

VS.

STATE OF IOWA ET AL.,

RESPONDENT.

REPLY BRIEF TO RESPONDENTS' OPPOSITION AND ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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ARGUMENT

This brief is in reply to both the opposition to petition and answer to petition for writ of certiorari submitted by Attorney General of Iowa, Thomas Miller and attorney, Bernard O'Malley respectively. The petitioners have not sought review of the issues they presented without serious consideration. Neither the proceedings or the issues presented are frivolous either in the layman's sense or in the legal sense for when substantial constitutional issues are raised which have not heretofore been addressed or can not be addressed by the state court, it is proper for the Federal Courts of deal with them.

1. The question presented (No.1) and the argument thereon (P.4) of respondents opposition brief does not deal with the issue. First, all Petitioners question the legal authority of the state court judges. Second, Florence Walker did not have a full

and fair hearing. She had no hearing at all nor did she at any time have any appeal or final state court judgment because those who attacked her in both the conservatorship and the estate proceedings were given legal jurisdiction over her. This has not been denied.

The Statements on pages 2 and 3 of respondents opposition brief concerning complaint, ¶ 18, does not refer to Florence Walker. The court had refused to allow her executor to represent her interests on appeal and the appointed administrator did not do so. It is ludicrous therefore to state that she should have sought review through a writ of certiorari when she was legally unable to seek that writ. That is the issue.

Also when an administrator subverts the interests of an estate. In Re Wissinks Estate, 46 NW 2d 717 or when there is, as here, no proper administrator, Rule 17

Federal Rules of Civil Procedure, a "next Friend" action is permissable.

2. Question two (2) raised and the argument thereon is without merit and is an attempt by Attorney General Miller to mislead the court. The issue, which respondents' briefs do not address, is(in part) that the 21st Amendment to the Iowa Constitution grants to attorneys the right (which is denied all others) to vote for members of the judicial nominating commissions. Thus one small occupational group is given control over the judiciary branch of government. The issue also involves the fact that justices and judges are named chairmen of the nominating commissions.

Because of the inherent inequities here mentioned Petitioners maintain that the 21st Amendment to the Iowa Constitution is unconstitutional on its face and deprives the petitioners of their rights of due process and equal protection of the laws guaranteed

by the 5th and 14th Amendments to the United States Constitution.

The petitioners point out that both Attorney General Miller and Mr. O'Malley as attorneys are granted the right (denied the petitioners) to vote for members of the judicial nominating commissions.

The question by respondents concerning the transfer of judges does not fully address the issue. The cases cited, Orloski v. Davis, 564 F. Supp. 526 (MD Penn 1983) and others involve different circumstances than the instant case for not only did petitioners have no say in the selection of or the vote to dismiss those judges, the fact that their cases were heard an inordinate number of times by transferred judges shows that the policy of transferring judges lends itself to abuse.

CONCLUSION

For the above reasons as well as for the reasons in the petition the Supreme Court should disregard the arguments in respondents' briefs and should approve Petitioners request for the writ of Certiorari.

Respectfully sumitted,

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